

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

ERIE INSURANCE COMPANY,

Plaintiff,

-v.-

5:22-CV-490
(MAD/ATB)

EMPIRE CAPITAL LOGISTICS, LLC, et al.,

Defendants.

LEE SIEGEL, ESQ., et al., for Plaintiff

GEOFFREY GIBBON, ESQ., et al., for Defendant Porcha D. Givens

ANDREW T. BAXTER, United States Magistrate Judge

ORDER

On April 18, 2023, the court conducted a stenographically-recorded telephone conference addressing plaintiff's letter motion to amend the complaint and join a new defendant (Dkt. No. 33) and defendant Givens' letter motion in opposition (Dkt. No. 34).

WHEREFORE, for the reasons stated on the record during that conference,¹ it is

ORDERED, that plaintiff's motion to amend and join (Dkt. No. 33), is **DENIED IN PART**, with respect to the following causes of action because (i) plaintiff has failed to demonstrate good cause for the untimely filing of the motion to add these causes of action under Fed. R. Civ. P. 16(b); (ii) the delay in seeking to add these causes of action would be unduly prejudicial to defendant Givens; and (iii) these causes of action are not plausible, as pled, and are futile:

¹ To the extent this court addressed the merits of the parties' claims or defenses, in connection with the motion to amend, my reasoning is obviously not binding on the assigned District Judge in this action—Hon. Mae A. D'Agostino—in connection with her resolution of any objections to this Order, any subsequent motions in limine, or any subsequent dispositive motions.

1. The FIFTH CAUSE OF ACTION (Conspiracy to Commit Fraud - As Against Bakradze and Samkharadze) (Dkt. No. 33-1 at 16, ¶¶ 119-126); and

2. The SIXTH CAUSE OF ACTION (RICO civil violation - As against Bakradze and Samkharadze) (Dkt. No. 33-1 at 17-18, ¶¶ 127-136).²

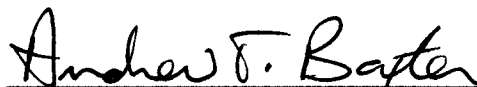
And it is further

ORDERED, that, plaintiff's motion to amend (Dkt. No. 33), including the motion to add the proposed FOURTH CAUSE OF ACTION (Fraud - As Against Samkharadze) (Dkt. No. 33-1 at 14-15, ¶¶ 99-118), is **OTHERWISE GRANTED**.³

And it is further

ORDERED, that, the discovery and dispositive motion deadlines in this action are stayed and, by May 12, 2023 (if no objections to this Order are filed), or within 10 days of the resolution of any objections to this Order by District Judge Mae A. D'Agostino, the parties are directed to file a status report proposing a revised schedule for the completion of discovery and the filing of dispositive motions.

Dated: April 18, 2023


Andrew T. Baxter
U.S. Magistrate Judge

² Given that the motion to add all claims against proposed defendant Kishvardi Bakradze have been denied, he should not be added as a defendant in this action unless District Judge D'Agostino rules otherwise, in response to any objections filed by the parties with respect to this court's Order.

³ Plaintiff's proposed amended complaint may not be filed, and will not become the operative pleading in this action (subject to the court's rulings not allowing the addition of certain of the proposed causes of action) until any objections to or appeal of this Order before District Judge D'Agostino are resolved, or until the 14-day period within which such objections or appeal may be filed has passed without the filing of any challenge to this Order.